

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE APPEAL OF VARIANCE DECISIONS BY LOCAL  
BOARDS OF HEALTH TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS  
50-2-116 AND 75-5-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 50-2-116, MCA, is amended to read:

**"50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of the  
public health system, in collaboration with federal, state, and local partners, each local board of health shall:

(a) appoint and fix the salary of a local health officer who is:

(i) a physician;

(ii) a person with a master's degree in public health; or

(iii) a person with equivalent education and experience, as determined by the department;

(b) elect a presiding officer and other necessary officers;

(c) employ qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings at least quarterly and hold special meetings as necessary;

(f) identify, assess, prevent, and ameliorate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing;

(iii) isolation and quarantine measures;

(iv) diagnosis, treatment, and case management;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information;

(viii) education and training of health professionals; or

(ix) other public health measures as allowed by law;

(g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;

(h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;

(i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;

(j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.

(k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review ~~and must provide for appeal of variance decisions to the department~~ as required by 75-5-305.

(2) Local boards of health may:

(a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;

(b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;

(c) adopt regulations that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing

1 establishments and that are not less stringent than state standards for tattooing and body-piercing  
2 establishments;

3 (v) for the establishment of institutional controls that have been selected or approved by the:

4 (A) United States environmental protection agency as part of a remedy for a facility under the federal  
5 Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

6 (B) department of environmental quality as part of a remedy for a facility under the Montana  
7 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

8 (vi) to implement the public health laws; and

9 (d) promote cooperation and formal collaborative agreements between the local board of health and  
10 tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,  
11 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters  
12 addressed in this title.

13 (3) A local board of health may provide, implement, facilitate, or encourage other public health services  
14 and functions as considered reasonable and necessary."  
15

16 **Section 2.** Section 75-5-305, MCA, is amended to read:

17 **"75-5-305. Adoption of requirements for treatment of wastes -- variance procedure -- appeals. (1)**

18 The board may establish minimum requirements for the treatment of wastes. For cases in which the federal  
19 government has adopted technology-based treatment requirements for a particular industry or activity in 40 CFR,  
20 chapter I, subchapter N, the board shall adopt those requirements by reference. To the extent that the federal  
21 government has not adopted minimum treatment requirements for a particular industry or activity, the board may  
22 do so, through rulemaking, for parameters likely to affect beneficial uses, ensuring that the requirements are  
23 cost-effective and economically, environmentally, and technologically feasible. Except for the technology-based  
24 treatment requirements set forth in 40 CFR, chapter I, subchapter N, minimum treatment may not be required to  
25 address the discharge of a parameter when the discharge is considered nonsignificant under rules adopted  
26 pursuant to 75-5-301.

27 (2) (a) The board shall establish minimum requirements for the control and disposal of sewage from  
28 private and public buildings, including standards and procedures for variances from the requirements.

29 (b) For gray water reuse systems in private, single-family residences, the board shall establish rules that:

30 (i) allow the diversion of gray water from wastewater treatment systems and limit the amount of gray

1 water flow allowed by permit;

2 (ii) address the uses of gray water, including when and how gray water may be applied to land; and

3 (iii) include any other provisions that the board considers necessary to ensure that gray water reuse  
4 systems comply with laws and regulations and protect public health and the environment.

5 ~~(3) An applicant for a variance from minimum requirements adopted by a local board of health pursuant  
6 to 50-2-116 may appeal the local board of health's final decision to the department by submitting a written request  
7 for a hearing within 30 days after the decision. The written request must describe the activity for which the  
8 variance is requested, include copies of all documents submitted to the local board of health in support of the  
9 variance, and specify the reasons for the appeal of the local board of health's final decision:~~

10 ~~——— (4) The department shall conduct a hearing on the request pursuant to Title 2, chapter 4, part 6. Within  
11 30 days after the hearing, the department shall grant, conditionally grant, or deny the variance. The department  
12 shall base its decision on the board's standards for a variance.~~

13 ~~——— (5) A decision of the department pursuant to subsection (4) is appealable to district court under the  
14 provisions of Title 2, chapter 4, part 7."~~

15  
16 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,  
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18  
19 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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